

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

Plaintiff, :

v. :

20 Cr. 15 (PKC)

VIRGIL GRIFFITH, :

Defendant. :

-----

**DEFENDANT VIRGIL GRIFFITH'S  
RESPONSE TO GOVERNMENT'S PROPOSED  
EXAMINATION OF PROSPECTIVE JURORS**

BRIAN E. KLEIN  
KERI CURTIS AXEL  
WAYMAKER LLP  
777 S. Figueroa Street, Suite 2850  
Los Angeles, California 90017  
(424) 652-7800

SEAN S. BUCKLEY  
KOBRE & KIM LLP  
800 Third Avenue  
New York, New York 10022  
(212) 488-1200

*Attorneys for Virgil Griffith*

### **PRELIMINARY STATEMENT**

Defendant Virgil Griffith respectfully submits the following response to the government's proposed examination of prospective jurors. (*See* Dkt. No. 129.)

The defense's edits to the government's proposals are highlighted in yellow, with additions bolded and deletions struck through (*e.g.*, **addition**, and ~~deletion~~). Following the edits, explanations for deletions and additions are provided in italicized brackets (*e.g.*, *[explanation]*).

Like the government, the defense also respectfully requests that the Court pursue more detailed questioning if a potential juror's answers reveal such inquiry is needed to ensure that person can be a fair and impartial juror.

### **THE CHARGE**

The defense's proposed edits to the government's suggested jury charge are as follows:

1. This is a criminal case. The defendant, Virgil Griffith, has been charged in an Indictment ~~returned by a grand jury sitting in this District~~ with violating federal law. The Indictment is not evidence. It simply contains the charge that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. The defendant has denied the charge made by the Government and has pleaded not guilty to the Indictment.

*[The proposed deletion is necessary because the fact that an indictment was returned by a grand jury has no bearing on the petit jury's considerations and may only create confusion for potential jurors.]*

2. Those of you who are selected to sit on this jury will receive a detailed explanation of the charge at the conclusion of the case, but I will briefly summarize the charge in this case now in order to determine whether there is anything about the nature of this case that may make it difficult or inappropriate for you to serve on the jury.

3. The Indictment contains one count. That count charges the defendant with participating in what is called a conspiracy, or an agreement, to violate the International Emergency Economic Powers Act, also known as "IEEPA," and the relevant regulations that are part of the sanctions imposed by the United States against North Korea, also known as the

Democratic People's Republic of Korea or "DPRK." In particular, Griffith is charged with conspiring to violate the IEEPA by agreeing with others to achieve one or both of the following two unlawful objectives: first, to provide services to North Korea or individuals in North Korea without obtaining a license to do so from the U.S. Government; and second, to evade and avoid the requirements of U.S. law with respect to the provision of services to North Korea or individuals in North Korea.

**VOIR DIRE**

The defense's proposed edits to the government's suggested voir dire are as follows:

16. Under our Constitution, no person accused of a crime is required to testify at trial and jurors may not draw any unfavorable **inference conclusion** against the defendant **or consider the fact that** if he ~~should elect~~ did not to testify. Would any of you be unwilling or unable to follow that instruction?

*[This language more accurately reflects the law and will be clearer because what an inference is often requires explanation.]*

21. Have you or anyone with whom you are close ever been employed by or had dealings with any employee or representative of the United States Attorney's Office for the Southern District of New York or the U.S. Department of Justice? Have you or anyone with whom you are close ever been employed by or had dealings with any employee or representative of the Federal Bureau of Investigation, also known as the FBI? **Have you or anyone with whom you are close ever been employed by or had dealings with any employee or representative of the State Department or Treasury Department including the Office of Foreign Assets Control (called "OFAC")? Have you or any close friends or family members ever been employed by any other law enforcement (e.g., New York City Police Department, the Manhattan District Attorney's Office) or regulatory agency (like the Securities and Exchange Commission (called the "SEC"))?**

*[Both OFAC and State Department personnel are expected to testify, and the questions regarding law enforcement and regulatory agencies should cover all the possibilities, not just the U.S. Attorney's Office and Department of Justice.]*

22. The witnesses in this case will include present or former members of law enforcement **and government agencies**, including members of the FBI, **OFAC, and State Department**. ~~Would you be unable or unwilling to follow my instruction that the testimony of a law enforcement officer is entitled to no more and no less weight than the testimony of another witness simply because the witness is a law enforcement officer?~~ **Is there anything about the fact that a witness is a present or former member of law**

**enforcement or a government agency that would affect your evaluation of their testimony either positively or negatively?”**

*[Please see explanation above. Further, the deletion and additional sentence directly probe whether a potential juror can be fair and impartial.]*

25. Have you or has anyone you are close to, including family or friends, ever visited or resided in **South Korea**, North Korea, **China**, or Singapore? **Have you ever traveled outside of the U.S.? If so, where?**

*[The government intends to introduce evidence that involves South Korea and China too, and since this case involves travel, that is an important area of inquiry as well.]*

26. I expect that you will hear that much, if not all, of the conduct at issue in this case occurred outside of the United States. United States law provides that persons engaged in conduct occurring outside the United States nevertheless may be prosecuted in United States courts for certain violations of American federal law, **although U.S. citizens still enjoy protection from U.S. prosecution for exercising their freedom of speech while abroad**. Would it affect your ability to fairly and impartially render a verdict in this case if the evidence for the charged conduct includes conduct that took place outside of the United States?

*[This is an important legal principle that is issue in this case, which many citizens are not aware of.]*

28. Do you have any opinion about the enforcement of federal laws, **including the Indictment's charge**, that might prevent you from being fair and impartial in this case? ~~Do you believe that the crime charged in the Indictment, as I have described it to you, should not be illegal or that such laws should not be enforced? Do you have any opinions or beliefs about the enforcement of these or other federal laws that might prevent you from being fair and impartial in this case?~~

*[This addition makes the deleted lines unnecessary.]*

30. I expect that some of the evidence in this trial will relate to cryptocurrency. Do you have any views regarding, or experience with, cryptocurrency that would hinder or prevent you from rendering a fair and impartial verdict? **Have you seen, heard, or read anything about cryptocurrencies like Bitcoin and Ether? If so, what? Do you have any personal experience with cryptocurrency? If so, what?**

*[These additional questions are important in this case due to its specific facts.]*

36. Some of the evidence in this trial may be presented in the form of recorded conversations and meetings. The defendant and/or his alleged co-conspirators may not have known that they were being recorded at the time the recordings were made. **Any such recordings that**

~~may be played during the trial are admissible in this case.~~ Do you have any feelings or opinions about the use of evidence obtained from such recordings that would affect your ability to be fair and impartial in this case? Does the fact that these **alleged** conversations and meetings may have been recorded without the defendant's or his alleged co-conspirators' knowledge in any way affect your ability to render a fair and impartial verdict?

*[The sentence is deleted because it should not be assumed that evidence being offered is necessarily admissible since it could be admitted conditionally and later found to be inadmissible. The sentence is also unnecessary because the point of the question is to elicit a potential juror's pre-existing biases regarding certain types of evidence. The admissibility of the evidence is not relevant to that question and in fact distracts from the intended point of the inquiry. The addition of "alleged" is important because nothing has been proven at this point.]*

38. Some of the evidence in this trial may come in the form of emails and communications sent and received by the defendant and others over the Internet and electronic messaging applications. ~~I also instruct you that this type of evidence does not violate the rights of the defendant, and it is perfectly proper for this type of evidence to be introduced at trial for your consideration. With that in mind,~~ Do you have any feelings about the use of such **alleged** online communications that would make it difficult for you to consider such evidence fairly and impartially at trial?

*[Similar reasons as above. In addition, the defense may contend that the government has violated Mr. Griffith's rights, even if the Court reaches a different conclusion.]*

39. Some of the evidence in this trial may be presented in the form of **testimony from FBI agents or other government officials** about statements that the **government contends the** defendant made to law enforcement. ~~I instruct you that these statements were properly obtained by the Government and that it is proper for this evidence to be introduced at trial for your consideration.~~ Do you have any feelings or opinions about the use of such **alleged** statements that could affect your ability to be fair and impartial in this case?

*[Similar reasons as above.]*

40. Some of the evidence admitted at trial may come from searches performed by law enforcement officers. ~~I instruct you that those searches were legal and that the evidence obtained from those searches is admissible in this case.~~ Do you have strong feelings about searches conducted by law enforcement officers or the use of evidence obtained from searches that would affect your ability to be fair and impartial in this case?

*[Similar reasons as above.]*

41. Do you have any expectations about the types of evidence that the Government should or will present in this criminal trial, or in a criminal trial more generally? Would you be unable to follow my instructions that the Government is not required to use any particular investigative technique investigating and presenting evidence of a crime? **Do you have any expectations about the types of evidence that the Mr. Griffith should or will present in this criminal trial?**

*[This addition ensures the inquiry goes to both the government and defense.]*

### **CONCLUSION**

The defense respectfully requests that the Court accept the defense's proposed objections and changes.

Dated: August 27, 2021

Respectfully Submitted,

*/s/ Brian E. Klein*

---

Brian E. Klein  
Keri Curtis Axel  
Waymaker LLP

-and-

Sean S. Buckley  
Kobre & Kim LLP

*Attorneys for Virgil Griffith*